



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

January 21, 2004

MEMORANDUM

SUBJECT: Issuance of "Revised Model Administrative Order on Consent for Remedial Investigation and Feasibility Study"

FROM: Susan E. Bromm, Director /s/
Office of Site Remediation Enforcement

TO: Addressees

Attached is the "Revised Model Administrative Order on Consent for Remedial Investigations and Feasibility Studies." This model supersedes the "Model Administrative Order on Consent for Remedial Investigation/Feasibility Study" issued on July 2, 1991 (OSWER Directive No. 9835.3-2A), and is immediately effective.

The new model contains a number of revisions, which are generally designed to bring it into conformance with more recently issued CERCLA guidance and models, including the July 9, 2001 "Revised Model Administrative Order on Consent for Removal Actions" and the June 15, 2001 "Model RD/RA Consent Decree." The revisions include:

- S optional language for RI/FS at Superfund Alternative Sites;
- S updated special account creation language;
- S updated work to be performed language that includes updated guidance document references, provisions for PRPs to perform the risk assessment, provisions for developing institutional controls alternatives and performing a reuse assessment during the RI/FS;
- S updated access to information language;
- S several new sections including definitions, covenant not to sue by EPA, contribution protection and EPA approval of plans and other submissions sections; and
- S updated covenant not to sue by Respondents language including recently-issued non-exempt de micromis party and MSW waivers for use at non-NPL sites.

Regions should use this model as guidance when drafting and negotiating agreements to perform remedial investigations and feasibility studies. We encourage CERCLA staff to conform as closely as possible to the terms of these models, subject to modifications needed to address site-specific circumstances.

We would like to thank all EPA and DOJ staff who carefully reviewed and provided valuable input into this document. If you have any questions about the model, please contact Tracy Sheppard of the Regional Support Division at (202) 564-4785.

Attachment

Addresses: Director, Office of Site Remediation and Restoration, Region I
Director, Emergency and Remedial Response Division, Region II
Director, Hazardous Site Cleanup Division, Region III
Director, Waste Management Division, Region IV
Directors, Superfund Division, Regions V, VI, VII and IX
Assistant Regional Administrator, Office of Ecosystems Protection and Remediation, Region VIII
Director, Office of Environmental Cleanup, Region X
Director, Office of Environmental Stewardship, Region I
Director, Environmental Accountability Division, Region IV
Regional Counsel, Regions II, III, V, VI, VII, IX, and X
Assistant Regional Administrator, Office of Enforcement, Compliance, and Environmental Justice, Region VIII
Office of Regional Counsel Branch Chiefs, Regions I-X
Superfund Program Branch Chiefs, Regions I-X

cc: Mike Cook, Office of Superfund Remediation and Technology Innovation
Earl Salo, Office of General Counsel
Bruce S. Gelber, Environment and Natural Resources Division, U.S. Department of Justice

bcc: Alan Carpien, OGC
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Karen Dworkin, EES/DOJ
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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REVISED MODEL ADMINISTRATIVE ORDER ON CONSENT FOR
REMEDIAL INVESTIGATION / FEASIBILITY STUDY**

[NOTE: This model is designed for settlements involving performance of remedial investigations and feasibility studies under the Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA” (OSWER Directive # 9355.3-01, October 1988).]

Date of Issuance: January 21, 2004

This model and any internal procedures adopted for its implementation and use are intended solely as guidance for employees of the U.S. Environmental Protection Agency. They do not constitute rulemaking by the Agency and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this model or its internal implementing procedures.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION ____

IN THE MATTER OF:

[Site Name]

[City or Town, County, State]

ADMINISTRATIVE ORDER ON
CONSENT FOR REMEDIAL
INVESTIGATION/FEASIBILITY STUDY

[Names of Respondents (if many, reference
attached list)],

U.S. EPA Region ____
CERCLA Docket No. ____

Respondents

Proceeding Under Sections 104, 107 and
122 of the Comprehensive Environmental
Response, Compensation, and Liability Act,
as amended, 42 U.S.C. §§ 9604, 9607 and
9622.

MODEL RI/FS ADMINISTRATIVE ORDER ON CONSENT

(January 2004)

This updated Model RI/FS Administrative Order on Consent includes the following:

- ! Several new and/or updated sections
- ! Optional provisions for RI/FS at Superfund Alternative Sites
- ! Provisions for developing institutional controls alternatives as part of the RI/FS

This model and any internal procedures adopted for its implementation and use are intended solely as guidance for employees of the U.S. Environmental Protection Agency. They do not constitute rulemaking by the Agency and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this model or its internal implementing procedures.

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[NOTE: Appendices may also be listed in this Table of Contents.]

ADMINISTRATIVE ORDER ON CONSENT
FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY
[insert if applicable, “Operable Unit No.____”]

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent (“Order”) is entered into voluntarily by the United States Environmental Protection Agency (“EPA”) and **[insert names or attach list of Respondents]**, (“Respondents”). The Order concerns the preparation and performance of a remedial investigation and feasibility study (“RI/FS”) **[insert if applicable “for the operable unit consisting of (description of operable unit(s))** at the **[insert Site name]** located at **[insert address or descriptive location of the Site]** (“Site”) and the reimbursement for future response costs incurred by EPA in connection with the RI/FS **[insert if applicable, “as well as Past Response Costs”]**.¹

2. This Order is issued under the authority vested in the President of the United States by Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9607 and 9622 (“CERCLA”). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (Jan. 29, 1987), and further delegated to Regional Administrators on May 11, 1994, by EPA Delegation Nos. 14-14-C and 14-14-D. **[Insert if applicable, “This authority was further redelegated by the Regional Administrator of EPA Region ____ to the _____ (insert title of manager to whom delegation is made) by (insert the numerical designations and dates of regional delegation).]**

3. In accordance with Sections 104(b)(2) and 122(j)(1) of CERCLA, 42 U.S.C. §§ 9604(b)(2) and 9622(j)(1), EPA notified the **[insert the relevant Federal and/or State natural resource trustee(s)]** on _____, 20__, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal **[insert if applicable, “and/or State”]** trusteeship.

4. EPA and Respondents recognize that this Order has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Order do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity

¹ This model assumes that Future Response Costs (as defined in Paragraph 11) are being paid under the Order and provides language for recovery of Past Response Costs as well. If Past Response Costs are not included within the scope of the Order, do not include the following provisions: 1) Paragraph 11 - “Interim Response Costs” definition; “Past Response Costs” definition; the bracketed insert pertaining to Past Response Costs in the “Future Response Costs” definition; 2) Paragraph 77 (Payment for Past Response Costs); 3) Paragraph 81, Alternative 1 (Covenant Not to Sue by EPA); 4) optional section on Public Comment which follows Section XXVII; 5) the bracketed optional section on Attorney General Approval following Section XXVIII; and 6) the bracketed [Past Response Costs] in seven provisions of the Order: Paragraph 1, Paragraph 9, Paragraph 79, Paragraph 83(b) (Reservation of Rights by EPA); Paragraph 85 (Covenant not to Sue by Respondents); and Paragraph 91 (“matters addressed” definition).

of the findings of fact, conclusions of law and determinations in Sections V and VI of this Order. Respondents agree to comply with and be bound by the terms of this Order and further agree that they will not contest the basis or validity of this Order or its terms.

II. PARTIES BOUND

5. This Order applies to and is binding upon EPA and upon Respondents and their **[insert if applicable, “heirs,”]** successors and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent’s responsibilities under this Order.

6. Respondents are jointly and severally liable for carrying out all activities required by this Order. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Order, the remaining Respondents shall complete all such requirements.

7. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondents shall be responsible for any noncompliance with this Order.

8. Each undersigned representative of Respondents certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to execute and legally bind Respondents to this Order.

III. STATEMENT OF PURPOSE

9. In entering into this Order, the objectives of EPA and Respondents are: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from the Site, by conducting a Remedial Investigation as more specifically set forth in the Statement of Work (“SOW”) attached as Appendix A to this Order; (b) to identify and evaluate remedial alternatives to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site, by conducting a Feasibility Study as more specifically set forth in the SOW in Appendix A to this Order; and (c) to recover response and oversight costs incurred by EPA with respect to this Order **[insert if applicable, “, as well as Past Response Costs”]**.

10. The Work conducted under this Order is subject to approval by EPA and shall provide all appropriate and necessary information to assess Site conditions and evaluate alternatives to the extent necessary to select a remedy that will be consistent with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 (“NCP”). Respondents shall conduct all Work under this Order in compliance with CERCLA, the NCP, and all applicable EPA guidances, policies, and procedures.

IV. DEFINITIONS

[NOTE: The following list of definitions may be reduced or expanded as appropriate.]

11. Unless otherwise expressly provided herein, terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

b. “Day” shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

c. “Effective Date” shall be the effective date of this Order as provided in Section XXIX.

d. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

[____. “_____” shall mean the [insert name of State pollution control agency or environmental protection agency] and any successor departments or agencies of the State.]

e. “Engineering Controls” shall mean constructed containment barriers or systems that control one or more of the following: downward migration, infiltration or seepage of surface runoff or rain; or natural leaching migration of contaminants through the subsurface over time. Examples include caps, engineered bottom barriers, immobilization processes, and vertical barriers.

f. “Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing, or enforcing this Order, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, Agency for Toxic Substances and Disease Registry (“ATSDR”) costs, the costs incurred pursuant to Paragraph 54 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation) [, and] Paragraph 40 (emergency response) [if Paragraph 84 is included, insert, “, and Paragraph 84 (Work takeover).”]. Future Response Costs shall also include all Interim Response Costs [if Past Response Costs are paid under the Order, insert, “, and all Interest on those Past Response Costs Respondents have agreed to reimburse under this Order that has accrued pursuant to 42

U.S.C. § 9607(a) during the period from [insert date identified in Past Response Costs definition] to the Effective Date of this Order.”].

[NOTE: If Region is not seeking to recover Past Response Costs under this Order, delete the final sentence in the Future Response Costs definition and the “Interim Response Costs” definition.]

g. “Institutional controls” shall mean non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to contamination and/or protect the integrity of a remedy by limiting land and/or resource use. Examples of institutional controls include easements and covenants, zoning restrictions, special building permit requirements, and well drilling prohibitions.

h. “Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

[NOTE: Include the following definition only if EPA is seeking to recover Past Response Costs under this Order.]

[____. “Interim Response Costs” shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between **[insert date identified in Past Response Costs definition]** and the Effective Date, or (b) incurred prior to the Effective Date, but paid after that date.]

[NOTE: The following definition should be used, as appropriate, if the Order contains a waiver of contribution rights against certain MSW parties at the Site as provided in Section XXI (Covenant Not To Sue By Respondents).]

[____. “Municipal solid waste” shall mean waste material: (i) generated by a household (including a single or multifamily residence); or (ii) generated by a commercial, industrial or institutional entity, to the extent that the waste material – (I) is essentially the same as waste normally generated by a household; (II) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and (III) contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household.]

i. “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

[NOTE: Including the following definition if operable unit designations have already been made for the Site.]

[____. “Operable Unit ____” shall mean [insert, if applicable, a description of the operable unit or units covered by the Order, referencing any appendices showing or describing the operable unit(s) in detail.]

j. “Order” shall mean this Administrative Order on Consent, the SOW, all appendices attached hereto (listed in Section XXVII) and all documents incorporated by reference into this document including without limitation EPA-approved submissions. EPA-approved submissions (other than progress reports) are incorporated into and become a part of the Order upon approval by EPA. In the event of conflict between this Order and any appendix or other incorporated documents, this Order shall control.

k. “Paragraph” shall mean a portion of this Order identified by an Arabic numeral. **[Insert, if applicable, “References to paragraphs in the SOW will be so identified (for example, “SOW paragraph 15”).”]**

l. “Parties” shall mean EPA and Respondents.

[NOTE: Include the following definition only if EPA is seeking to recover Past Response Costs under this Order.]

[____. “Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through [insert date of most recent cost update], plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.]

m. “RCRA” shall mean the Resource Conservation and Recovery Act, also known as the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.*

n. “Respondents” shall mean **[insert names of Respondents] [insert if applicable, “those Parties identified in Appendix ____”]**.

o. “Section” shall mean a portion of this Order identified by a Roman numeral. **[Insert if applicable, “References to sections in the SOW will be so identified; for example as “SOW Section V.”]**

p. “Site” shall mean the _____ Superfund Site, encompassing approximately ____ acres, located at **[insert address or description of location] in [insert name of City, County, State] [insert if applicable, “and depicted generally on the map attached as Appendix B.”]**

q. “State” **[replace “State” with “Commonwealth” if applicable]** shall mean

the State **[replace State with “Commonwealth” if applicable]** of **[insert name of State.]**

r. “Statement of Work” or “SOW” shall mean the Statement of Work for development of a RI/FS for **[insert “the Site” or “operable unit(s) ____”]**, as set forth in Appendix A to this Order. The Statement of Work is incorporated into this Order and is an enforceable part of this Order as are any modifications made thereto in accordance with this Order.

s. “Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any “hazardous material” under **[insert appropriate State statutory citation]**.

t. “Work” shall mean all activities Respondents are required to perform under this Order, except those required by Section XIV (Retention of Records).

V. FINDINGS OF FACT

[NOTE: Because Findings of Fact are Site-specific, no model language is provided. However, suggested topics are provided below for some findings. Facts should be presented concisely, accurately, and logically. Provide enough information in this Section for the Order to stand on its own. The Findings of Fact need to establish and justify the Conclusions of Law set forth in this Order. Regions should include a discussion of the following points:

12. Identification of the Site with the name, location and description (including characteristics of the Site and a description of the surrounding areas, i.e., commercial/industrial/residential area, nearest public supply wells, nearby water bodies, potentially sensitive ecological areas);

13. A brief history of the Site including Site ownership and operations (process or other activity producing waste, nature of wastes produced);

14. Information that there are hazardous substances at the Site by listing specific chemicals found at the Site, and their locations, concentrations and quantities where known;

15. Description of actual and/or potential release (i.e. leaking drums, contaminated soils, etc.) and contaminant migration pathways, and possible or known routes of exposure, making clear that these are not exclusive;

16. Identification of the populations at risk; both human and non-human;

17. Health/environmental effects of some major contaminants;

18. Whether the Site is on the [proposed] National Priorities List. Reference CERCLA Section 105 and the Federal Register in which notice of listing appeared;

“The _____ Site was [listed on] [proposed for inclusion on] the National Priorities List (“NPL”) pursuant to CERCLA Section 105, 42 U.S.C. § 9605, on _____ (insert month, day and year).”

19. Identification of Respondents, i.e., name/business; legal status (i.e., corporation, partnership, sole proprietor, trust, individual, federal, state or local government, etc.), general categories of Respondents’ liability under CERCLA Section 107(a) and connection with the Site, e.g., owner or operator of hazardous waste site, or person who arranged for disposal or treatment of, or transporter of hazardous substances found at the Site; and

20. Identification of prior response and enforcement actions, including investigations and assessments, if any, taken at the Site, by EPA or the State.]

[NOTE: If the Order compromises a claim for response costs,² but Attorney General approval is not required because the total response costs are not expected to exceed \$500,000, excluding interest, insert a finding of fact stating that “The Regional Administrator of EPA Region ___, or [his/her] delegatee, has determined that the total past and projected response costs of the United States at or in connection with the Site will not exceed \$500,000, excluding interest.”]

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, EPA has determined that:

21. The **[insert name]** Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

22. The contamination **[insert the names of the particular hazardous substances if desired]** found at the Site, as identified in the Findings of Fact above, includes [a] "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). **[Insert if appropriate, “or constitutes "any pollutant or contaminant" that may present an imminent and substantial danger to public health or welfare under Section 104(a)(1) of CERCLA.”]**

23. The conditions described in **[insert if appropriate, “Paragraphs _ of”]** the Findings of Fact above constitute an actual and/or threatened "release" of a hazardous substance from the facility as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

24. Each Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C.

²

Note CERCLA § 104(a)(1) requires that potentially responsible parties must agree to pay oversight costs.

§ 9601(21). **[Provide names of Respondents, if desired.]**

25. Respondents are responsible parties under Sections 104, 107 and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607 and 9622.

[NOTE: Regions should specify each category of liability under Section 107. For example:

a. Each Respondent is a person who either generated the hazardous substances found at the Site, is a person who at the time of disposal of any hazardous substances owned or operated the Site, or is a person who arranged for disposal or transport for disposal of hazardous substances at the Site. Each Respondent therefore may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

b. Respondents [insert names] are the “owner(s)” and/or “operator(s)” of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

c. Respondents [insert names] were the “owners” and/or “operators” of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

d. Respondents [insert names] arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

e. Respondents [insert names] accept or accepted hazardous substances for transport to the facility selected by Respondents, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).]

26. The actions required by this Order are necessary to protect the public health, welfare or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and will expedite effective remedial action and minimize litigation, 42 U.S.C. § 9622(a).

27. EPA has determined that Respondents are qualified to conduct the RI/FS within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the Work properly and promptly, in accordance with Sections 104(a) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a) and 9622(a), if Respondents comply with the terms of this Order.

VII. ORDER

28. Based upon the foregoing Findings of Fact and Conclusions of Law and Determinations, it is hereby Ordered and Agreed that Respondents shall comply with all

provisions of this Order, including, but not limited to, all appendices to this Order and all documents incorporated by reference into this Order.

VIII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

[NOTE: Regions may replace references to EPA's Project Coordinator with Remedial Project Manager (RPM), On-Scene Coordinator (OSC) or Project Manager.]

29. Selection of Contractors, Personnel. All Work performed under this Order shall be under the direction and supervision of qualified personnel. Within 30 days of the Effective Date of this Order, and before the Work outlined below begins, Respondents shall notify EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out such Work. With respect to any proposed contractor, Respondents shall demonstrate that the proposed contractor has a quality system which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995, or most recent version), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001 or subsequently issued guidance) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondents shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements. This Order is contingent on Respondents' demonstration to EPA's satisfaction that Respondents are qualified to perform properly and promptly the actions set forth in this Order. If EPA disapproves in writing of any person's technical qualifications, Respondents shall notify EPA of the identity and qualifications of the replacements within 30 days of the written notice. If EPA subsequently disapproves of the replacement, EPA reserves the right to terminate this Order and to conduct a complete RI/FS, and to seek reimbursement for costs and penalties from Respondents. During the course of the RI/FS, Respondents shall notify EPA in writing of any changes or additions in the personnel used to carry out such Work, providing their names, titles, and qualifications. EPA shall have the same right to disapprove changes and additions to personnel as it has hereunder regarding the initial notification.

30. Within ____ days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondents required by this Order and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site Work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number and qualifications within ____ days following EPA's disapproval. Respondents shall have the right to change their Project Coordinator, subject to EPA's right to disapprove. Respondents shall notify EPA ____ days before such a

change is made. The initial notification may be made orally, but shall be promptly followed by a written notification. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondents. **[Insert this sentence if Respondents have named their Project Coordinator before the Order is finalized, "Documents to be submitted to the Respondents shall be sent to [insert name, title, organization and address of Respondents' Project Coordinator]."]**

31. EPA has designated _____ **[insert name of EPA's Project Coordinator]** of the **[insert Regional Office, e.g., Emergency and Enforcement Response Branch, Region ____]** as its Project Coordinator **[replace with "Remedial Project Manager" or "On-Scene Coordinator" as preferred]**. EPA will notify Respondents of a change of its designated Project Coordinator. Except as otherwise provided in this Order, Respondents shall direct all submissions required by this Order to the Project Coordinator at **[insert EPA's Project Coordinator's address]**. **[NOTE: Regions may specify method of delivery, e.g., by certified mail, express mail, or other delivery method.]**

32. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and On-Scene Coordinator ("OSC") by the NCP. In addition, EPA's Project Coordinator shall have the authority consistent with the NCP, to halt any Work required by this Order, and to take any necessary response action when s/he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA Project Coordinator from the area under study pursuant to this Order shall not be cause for the stoppage or delay of Work.

33. EPA shall arrange for a qualified person to assist in its oversight and review of the conduct of the RI/FS, as required by Section 104(a) of CERCLA, 42 U.S.C. Section 9604(a). Such person shall have the authority to observe Work and make inquiries in the absence of EPA, but not to modify the RI/FS Work Plan.

IX. WORK TO BE PERFORMED

[NOTE: Regions may choose between two alternatives for Paragraph 34, each of which may be modified on a site-by-site basis to reflect Site needs and regional practice.]

The Regions may use Alternative 1, modified in accordance with regional practice to describe, in general, the major components of the Work at the Site or Alternative 2, which contains provisions found in the SOW. Depending on how the SOW is drafted, use of Alternative 1 may also eliminate the need for paragraphs 36-39 of this Section. However, Regions opting to use Alternative 1 must ensure that the following provisions are addressed either in the Order or in the SOW as appropriate:

- 1) Subparagraph 34b. Community Relations Plan - optional language for technical assistance plans at Superfund Alternative Sites.**
- 2) Subparagraph 34d. Reuse Assessment.**

3) Subparagraph 34e. Baseline Human Health Risk Assessment and Ecological Risk Assessment.

4) Subparagraph 34h(1). Development and Screening of Alternatives - inclusion of remedial action objectives for Engineering Controls and Institutional Controls in the Memorandum on Remedial Action Objectives.

5) Subparagraph 34i(2). Alternatives Analysis for Institutional Controls and Screening.

Regions opting to use the more comprehensive Alternative 2 should make sure that any changes made to the SOW are accurately reflected in the applicable provisions of this Order. Please note that Alternative 2 is not intended to replace the SOW as it is not a comprehensive restatement of the SOW.]

[NOTE: Regions should also address the use of presumptive remedies in the SOW, if appropriate and applicable to any area of the Site. Consult EPA's Guidance entitled "Implementing Presumptive Remedies" (EPA 540-R-97-029, October 1997) for more information on the use of presumptive remedies.]

[34. **[Alternative 1]** Respondents shall conduct the RI/FS in accordance with the provisions of this Order, the SOW, CERCLA, the NCP and EPA guidance, including, but not limited to the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01, October 1988 or subsequently issued guidance), "Guidance for Data Useability in Risk Assessment" (OSWER Directive #9285.7-05, October 1990 or subsequently issued guidance), and guidance referenced therein, and guidances referenced in the SOW, as may be amended or modified by EPA. The Remedial Investigation ("RI") shall consist of collecting data to characterize site conditions, determining the nature and extent of the contamination at or from the Site, assessing risk to human health and the environment and conducting treatability testing as necessary to evaluate the potential performance and cost of the treatment technologies that are being considered. The Feasibility Study ("FS") shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action to prevent, mitigate or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site. The alternatives evaluated must include, but shall not be limited to, the range of alternatives described in the NCP, and shall include remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, Respondents shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and Section 300.430(e) of the NCP, 40 C.F.R. § 300.430(e). Upon request by EPA, Respondents shall submit in electronic form all portions of any plan, report or other deliverable Respondents are required to submit pursuant to provisions of this Order.]

[34. **[Alternative 2]** Activities and Deliverables. Respondents shall conduct activities and submit plans, reports or other deliverables as provided by the attached SOW, which is incorporated by reference, for the development of the RI/FS. All such Work shall be conducted

in accordance with the provisions of this Order, the SOW, CERCLA, the NCP and EPA guidance, including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01, October 1988 or subsequently issued guidance), "Guidance for Data Useability in Risk Assessment" (OSWER Directive #9285.7-05, October 1990 or subsequently issued guidance), and guidance referenced therein, and guidances referenced in the SOW, as may be amended or modified by EPA. The general activities that Respondents are required to perform are identified below, followed by a list of plans, reports and other deliverables. The tasks that Respondents must perform are described more fully in the SOW and guidances. The activities, plans, reports and other deliverables identified below shall be developed as provided in the RI/FS Work Plan and Sampling and Analysis Plan, and shall be submitted to EPA as provided. All Work performed under this Order shall be in accordance with the schedules herein or established in the SOW, and in full accordance with the standards, specifications, and other requirements of the RI/FS Work Plan and Sampling and Analysis Plan, as initially approved or modified by EPA, and as may be amended or modified by EPA from time to time. In accordance with the schedules established in this Order or in the SOW, Respondents shall submit to EPA **[insert "and the State" if applicable]** ___ copies of all plans, reports and other deliverables required under this Order, the SOW and the RI/FS Work Plan. All plans, reports and other deliverables will be reviewed and approved by EPA pursuant to Section X (EPA Approval of Plans and Other Submissions). **[Insert if the Region contemplates conducting enhanced community involvement during the RI/FS, "Upon EPA's request, Respondents shall also provide copies of plans, reports or other deliverables to Community Advisory Groups, Technical Assistance Grant recipients or any other entities as directed by EPA."]** Upon request by EPA, Respondents shall submit in electronic form all portions of any plan, report or other deliverable Respondents are required to submit pursuant to provisions of this Order.

a. Scoping. EPA will determine the Site-specific objectives of the RI/FS and devise a general management approach for the Site, as stated in the attached SOW. Respondents shall conduct the remainder of scoping activities as described in the attached SOW and referenced guidances. At the conclusion of the project planning phase, Respondents shall provide EPA with the following plans, reports and other deliverables:

(1) RI/FS Work Plan. Within ___ days after the Effective Date of this Order **[NOTE: Regions may change this provision to any other appropriate milestone, e.g., within 60 days after notice of contractor approval.]**, Respondents shall submit to EPA a complete RI/FS Work Plan. Upon its approval by EPA pursuant to Section X (EPA Approval of Plans and Other Submissions), the RI/FS Work Plan shall be incorporated into and become enforceable under this Order.

[NOTE: Regions may include the list of items to be included in the RI/FS Work Plan or provide a cross-reference to the SOW provision that lists those items.]

(2) Sampling and Analysis Plan. Within ___ days after the Effective Date, Respondents shall submit a Sampling and Analysis Plan to EPA for review and approval

pursuant to Section X (EPA Approval of Plans and Other Submissions). This plan shall consist of a Field Sampling Plan (“FSP”) and a Quality Assurance Project Plan (“QAPP”), as described in the Statement of Work and guidances, including, without limitation, “EPA Guidance for Quality Assurance Project Plans (QA/G-5)” (EPA/600/R-02/009, December 2002 or subsequently issued guidance), and “EPA Requirements for Quality Assurance Project Plans (QA/R-5)” (EPA 240/B-01/003, March 2001 or subsequently issued guidance). Upon its approval by EPA pursuant to Section X (EPA Approval of Plans and Other Submissions), the Sampling and Analysis Plan shall be incorporated into and become enforceable under this Order.

(3) Site Health and Safety Plan. Within __ days after the Effective Date of this Order, Respondents shall submit for EPA review and comment a Site Health and Safety Plan that ensures the protection of on-site workers and the public during performance of on-site Work under this Order. This plan shall be prepared in accordance with EPA’s Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992 or subsequently issued guidance). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (“OSHA”) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. **[NOTE: Regions may provide more detail, e.g., SPCC, evacuation plans, etc.]** Respondents shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the RI/FS.

b. Community Relations Plan **[insert the following for Superfund Alternative Sites, “and Technical Assistance Plan”]**. EPA will prepare a community relations plan, in accordance with EPA guidance and the NCP. As requested by EPA, Respondents shall provide information supporting EPA’s community relations plan and shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or concerning the Site.

[NOTE: The sample language below is an additional provision that Regions should add to provide for Technical Assistance funding for community representatives during response actions at Superfund Alternative Sites and other appropriate sites:

Within 30 days of a request by EPA, Respondents shall provide EPA with a Technical Assistance Plan (“TAP”) for providing and administering up to \$50,000 of Respondents’ funds to be used by a qualified community group to hire independent technical advisers during the Work conducted pursuant to this Order. The TAP shall state that Respondents will provide and administer any additional amounts needed if EPA, in its discretion, determines that the selected community group has demonstrated such a need prior to EPA’s issuance of the ROD contemplated by this Order. Upon its approval by EPA pursuant to Section X (EPA Approval of Plans and Other Submissions), the TAP shall be incorporated into and become enforceable under this Order.]

c. Site Characterization. Following EPA approval or modification of the RI/FS Work Plan and Sampling and Analysis Plan, Respondents shall implement the provisions of

these plans to characterize the Site. Respondents shall complete Site characterization and submit all plans, reports and other deliverables in accordance with the schedules and deadlines established in this Order, the SOW, and/or the EPA-approved RI/FS Work Plan and Sampling and Analysis Plan.

d. Reuse Assessment. If EPA, in its sole discretion, determines that a Reuse Assessment is necessary,³ Respondents will perform the Reuse Assessment in accordance with the SOW, RI/FS Workplan and applicable guidance. The Reuse Assessment should provide sufficient information to develop realistic assumptions of the reasonably anticipated future uses for the Site. Respondents shall prepare the Reuse Assessment in accordance with EPA guidance, including, but not limited to: "Reuse Assessments: A Tool To Implement The Superfund Land Use Directive," OSWER Directive 9355.7-06P, June 4, 2001 or subsequently issued guidance.⁴

e. Baseline Human Health Risk Assessment and Ecological Risk Assessment.⁵ Respondents will perform the Baseline Human Health Risk Assessment and Ecological Risk Assessment ("Risk Assessments") in accordance with the SOW, RI/FS Work Plan and applicable EPA guidance, including but not limited to: "Interim Final Risk Assessment Guidance for Superfund, Volume I - Human Health Evaluation Manual (Part A)," (RAGS, EPA-540-1-89-002, OSWER Directive 9285.7-01A, December 1989); "Interim Final Risk Assessment Guidance for Superfund, Volume I - Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of Superfund Risk Assessments)," (RAGS, EPA 540-R-97-033, OSWER Directive 9285.7-01D, January 1998); "Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments" (ERAGS, EPA-540-R-97-006, OSWER Directive 9285.7-25, June 1997) or subsequently issued guidance.

f. Draft Remedial Investigation Report. Within ____ days after EPA's approval of the Risk Assessments, Respondents shall submit to EPA for review and approval pursuant to Section X (EPA Approval of Plans and Other Submissions), a Draft Remedial Investigation Report consistent with the SOW, RI/FS Work Plan, Sampling and Analysis Plan. The Draft RI Report shall also contain the Risk Assessments.

g. Treatability Studies. Respondents shall conduct treatability studies, except

³ OSWER Directive No. 9355.7-06P, "Reuse Assessments: A Tool To Implement The Superfund Land Use Directive," states that "[d]etermining the applicability and scope of a reuse assessment will be dependent on site specific circumstances and/or the overall approach anticipated for addressing the site." The guidance indicates that a reuse assessment may not be necessary at every site.

⁴ OSWER Directive No. 9355.7-06P, "Reuse Assessments: A Tool To Implement The Superfund Land Use Directive," permits, in general, the party performing the RI/FS to perform the reuse assessment. EPA can determine the appropriate level of oversight when PRPs perform the reuse assessment.

⁵ OSWER Directive No. 9340.1-02, "Revised Policy on Performance of Risk Assessments During Remedial Investigation/Feasibility Studies (RI/FS) Conducted by Potentially Responsible Parties," permits PRPs to perform the baseline risk assessment where appropriate. Consult the policy document for criteria for deciding whether or not to allow the PRPs to perform the risk assessment.

where Respondents can demonstrate to EPA's satisfaction that they are not needed. The major components of the treatability studies are described in the SOW. In accordance with the schedules or deadlines established in this Order, the SOW and/or the EPA-approved RI/FS Work Plan, Respondents shall provide EPA with the following plans, reports, and other deliverables for review and approval pursuant to Section X (EPA Approval of Plans and Other Submissions):

(1) Identification of Candidate Technologies Memorandum. This memorandum shall be submitted **[insert if applicable, “within ____ days of the effective date of this Order” or “as specified by EPA” or any other scheduling provision preferred by the Region].**

(2) Treatability Testing Statement of Work. If EPA determines that treatability testing is required, within ____ days thereafter [or as specified by EPA], Respondents shall submit a Treatability Testing Statement of Work (“TTSOW”).

(3) Treatability Testing Work Plan. Within ____ days after submission of the TTSOW, Respondents shall submit a Treatability Testing Work Plan, including a schedule.

(4) Treatability Study Sampling and Analysis Plan. Within ____ days after identification of the need for a separate or revised QAPP or FSP, Respondents shall submit a Treatability Study Sampling and Analysis Plan.

(5) Treatability Study Site Health and Safety Plan. Within ____ days after the identification of the need for a revised Health and Safety Plan, Respondents shall submit a Treatability Study Site Health and Safety Plan.

(6) Treatability Study Evaluation Report. Within ____ days after completion of any treatability testing, Respondents shall submit a treatability study evaluation report as provided in the Statement of Work and Work Plan.

h. Development and Screening of Alternatives. Respondents shall develop an appropriate range of waste management options that will be evaluated through the development and screening of alternatives, as provided in the SOW and RI/FS Work Plan. In accordance with the schedules or deadlines established in this Order, the SOW and/or the EPA-approved RI/FS Work Plan, Respondents shall provide EPA with the following deliverables for review and approval pursuant to Section X (EPA Approval of Plans and Other Submissions):

(1) Memorandum on Remedial Action Objectives. The Memorandum on Remedial Action Objectives shall include remedial action objectives for Engineering Controls as well as for Institutional Controls.

(2) Memorandum on Development and Screening of Alternatives. The Memorandum shall summarize the development and screening of remedial

alternatives.

i. Detailed Analysis of Alternatives. Respondents shall conduct a detailed analysis of remedial alternatives, as described in the SOW and RI/FS Work Plan. In accordance with the deadlines or schedules established in this Order, the SOW and/or the EPA-approved RI/FS Work Plan Respondents shall provide EPA with the following deliverables and presentation for review and approval pursuant to Section X (EPA Approval of Plans and Other Submissions):

(1) Report on Comparative Analysis and Presentation to EPA. Within ____ days after **[insert description of appropriate milestone]**, Respondents will submit a report on comparative analysis to EPA. Within ____ days of submitting the report on comparative analysis, Respondents will present to EPA a summary of the findings of the remedial investigation and remedial action objectives, and present the results of the nine criteria evaluation and comparative analysis, as described in the SOW.

(2) Alternatives Analysis for Institutional Controls and Screening. Respondents shall submit a memorandum on the Institutional Controls identified in the Memorandum on Development and Screening of Alternatives as potential remedial actions. The Alternatives Analysis for Institutional Controls and Screening shall (1) state the objectives (i.e., what will be accomplished) for the Institutional Controls; (2) determine the specific types of Institutional Controls that can be used to meet the remedial action objectives; (3) investigate when the Institutional Controls need to be implemented and/or secured and how long they must be in place; (4) research, discuss and document any agreement with the proper entities (e.g., state, local government entities, local landowners, conservation organizations, Respondents) on exactly who will be responsible for securing, maintaining and enforcing the Institutional Controls.⁶ The Alternatives Analysis for Institutional Controls and Screening shall also evaluate the Institutional Controls identified in the Memorandum on Development and Screening of Alternatives against the nine evaluation criteria outlined in the NCP (40 C.F.R. 300.430(e)(9)(iii)) for CERCLA cleanups, including but not limited to costs to implement, monitor and/or enforce the Institutional Controls.⁷ The Alternatives Analysis for Institutional Controls and Screening shall be submitted as an appendix to the Draft Feasibility Study Report.

(3) Draft Feasibility Study Report. Within ____ days after the presentation to EPA described in Paragraph 34(i)(1), Respondents shall submit to EPA a Draft

⁶ See "Institutional Controls: A Site Manager's Guide to Identifying, Evaluating and Selecting Institutional Controls at Superfund and RCRA Corrective Action Cleanups," (EPA 540-F-00-005), OSWER Directive 9355.0-74FS-P, September 2000.

⁷ See "Institutional Controls: A Site Manager's Guide to Identifying, Evaluating and Selecting Institutional Controls at Superfund and RCRA Corrective Action Cleanups," (EPA 540-F-00-005), OSWER Directive 9355.0-74FS-P, September 2000 for discussion of what factors to consider with respect to evaluation of Institutional Controls under the nine criteria. In addition, it is not necessary to evaluate "reduction of toxicity, mobility or volume through treatment" in the context of Institutional Controls.

Feasibility Study Report which reflects the findings in the Risk Assessments. Respondents shall refer to Table 6-5 of the RI/FS Guidance for report content and format. The report as amended, and the administrative record, shall provide the basis for the proposed plan under CERCLA Sections 113(k) and 117(a) by EPA, and shall document the development and analysis of remedial alternatives.]

35. Upon receipt of the draft FS report, EPA will evaluate, as necessary, the estimates of the risk to the public and environment that are expected to remain after a particular remedial alternative has been completed and will evaluate the durability, reliability and effectiveness of any proposed Institutional Controls.

36. Modification of the RI/FS Work Plan.

a. If at any time during the RI/FS process, Respondents identify a need for additional data, Respondents shall submit a memorandum documenting the need for additional data to the EPA Project Coordinator within ____ days of identification. EPA in its discretion will determine whether the additional data will be collected by Respondents and whether it will be incorporated into plans, reports and other deliverables.

b. In the event of unanticipated or changed circumstances at the Site, Respondents shall notify the EPA Project Coordinator by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In the event that EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the RI/FS Work Plan, EPA shall modify or amend the RI/FS Work Plan in writing accordingly. Respondents shall perform the RI/FS Work Plan as modified or amended.

c. EPA may determine that in addition to tasks defined in the initially approved RI/FS Work Plan, other additional Work may be necessary to accomplish the objectives of the RI/FS. Respondents agree to perform these response actions in addition to those required by the initially approved RI/FS Work Plan, including any approved modifications, if EPA determines that such actions are necessary for a complete RI/FS.

d. Respondents shall confirm their willingness to perform the additional Work in writing to EPA within 7 days of receipt of the EPA request. If Respondents object to any modification determined by EPA to be necessary pursuant to this Paragraph, Respondents may seek dispute resolution pursuant to Section XV (Dispute Resolution). The SOW and/or RI/FS Work Plan shall be modified in accordance with the final resolution of the dispute.

e. Respondents shall complete the additional Work according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the RI/FS Work Plan or written RI/FS Work Plan supplement. EPA reserves the right to conduct the Work itself at any point, to seek reimbursement from Respondents, and/or to seek any other appropriate relief.

f. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions at the Site.

37. Off-Site Shipment of Waste Material. Respondents shall, prior to any off-site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to EPA's Designated Project Coordinator. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

a. Respondents shall include in the written notification the following information: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. Respondents shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the remedial investigation and feasibility study. Respondents shall provide the information required by Subparagraph 37.a and 37.c as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

c. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondents shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

[NOTE: Paragraphs 38 and 39 below may be modified on a site-by-site basis to reflect Site needs and Regional practice.]

38. Meetings. Respondents shall make presentations at, and participate in, meetings at the request of EPA during the initiation, conduct, and completion of the RI/FS. In addition to discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

39. Progress Reports. In addition to the plans, reports and other deliverables set forth in this Order, Respondents shall provide to EPA monthly progress reports by the ____th day of the following month. At a minimum, with respect to the preceding month, these progress reports shall (1) describe the actions which have been taken to comply with this Order during that

month, (2) include all results of sampling and tests and all other data received by Respondents, (3) describe Work planned for the next two months with schedules relating such Work to the overall project schedule for RI/FS completion, and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

40. Emergency Response and Notification of Releases.

a. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action. Respondents shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the EPA Project Coordinator or, in the event of his/her unavailability, the On Scene Coordinator (“OSC”) or the Regional Duty Officer [**insert Regional Office, e.g., Emergency Planning and Response Branch, EPA Region, telephone number, and the EPA Regional Emergency 24-hour telephone number**] of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVIII (Payment of Response Costs).

b. In addition, in the event of any release of a hazardous substance from the Site, Respondents shall immediately notify the EPA Project Coordinator, the OSC or Regional Duty Officer at [**insert Regional spill phone number**] and the National Response Center at (800) 424-8802. Respondents shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

X. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

41. After review of any plan, report or other item that is required to be submitted for approval pursuant to this Order, in a notice to Respondents EPA shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondents modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Respondents at least one notice of deficiency and an opportunity to cure within ____ days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects.

42. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Subparagraph 41(a), (b), (c) or (e), Respondents shall proceed to take any action required by the plan, report or other deliverable, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XV (Dispute Resolution) with respect to the modifications or conditions made by EPA. Following EPA approval or modification of a submission or portion thereof, Respondents shall not thereafter alter or amend such submission or portion thereof unless directed by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Subparagraph 41(c) and the submission had a material defect, EPA retains the right to seek stipulated penalties, as provided in Section XVI (Stipulated Penalties).

43. Resubmission.

a. Upon receipt of a notice of disapproval, Respondents shall, within ____ days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XVI, shall accrue during the ____-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 44 and 45.

b. Notwithstanding the receipt of a notice of disapproval, Respondents shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by EPA. Implementation of any non-deficient portion of a submission shall not relieve Respondents of any liability for stipulated penalties under Section XVI (Stipulated Penalties).

c. Respondents shall not proceed further with any subsequent activities or tasks until receiving EPA approval, approval on condition or modification of the following deliverables: RI/FS Work Plan and Sampling and Analysis Plan, Draft Remedial Investigation Report and Treatability Testing Work Plan and Sampling and Analysis Plan [**delete any of the foregoing not required as a deliverable and add any additional deliverables, if desired**] and Draft Feasibility Study Report. While awaiting EPA approval, approval on condition or modification of these deliverables, Respondents shall proceed with all other tasks and activities which may be conducted independently of these deliverables, in accordance with the schedule set forth under this Order.

d. For all remaining deliverables not listed above in subparagraph 43.c., Respondents shall proceed with all subsequent tasks, activities and deliverables without awaiting EPA approval on the submitted deliverable. EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the RI/FS.

44. If EPA disapproves a resubmitted plan, report or other deliverable, or portion thereof, EPA may again direct Respondents to correct the deficiencies. EPA shall also retain the

right to modify or develop the plan, report or other deliverable. Respondents shall implement any such plan, report, or deliverable as corrected, modified or developed by EPA, subject only to Respondents' right to invoke the procedures set forth in Section XV (Dispute Resolution).

45. If upon resubmission, a plan, report, or other deliverable is disapproved or modified by EPA due to a material defect, Respondents shall be deemed to have failed to submit such plan, report, or other deliverable timely and adequately unless Respondents invoke the dispute resolution procedures in accordance with Section XV (Dispute Resolution) and EPA's action is revoked or substantially modified pursuant to a Dispute Resolution decision issued by EPA or superceded by an agreement reached pursuant to that Section. The provisions of Section XV (Dispute Resolution) and Section XVI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is not otherwise revoked, substantially modified or superceded as a result of a decision or agreement reached pursuant to the Dispute Resolution process set forth in Section XV, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XVI.

46. In the event that EPA takes over some of the tasks, but not the preparation of the RI Report or the FS Report, Respondents shall incorporate and integrate information supplied by EPA into the final reports.

47. All plans, reports, and other deliverables submitted to EPA under this Order shall, upon approval or modification by EPA, be incorporated into and enforceable under this Order. In the event EPA approves or modifies a portion of a plan, report, or other deliverable submitted to EPA under this Order, the approved or modified portion shall be incorporated into and enforceable under this Order.

48. Neither failure of EPA to expressly approve or disapprove of Respondents' submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA. Whether or not EPA gives express approval for Respondents' deliverables, Respondents are responsible for preparing deliverables acceptable to EPA.

XI. QUALITY ASSURANCE, SAMPLING, AND ACCESS TO INFORMATION

49. Quality Assurance. Respondents shall assure that Work performed, samples taken and analyses conducted conform to the requirements of the SOW, the QAPP and guidances identified therein. Respondents will assure that field personnel used by Respondents are properly trained in the use of field equipment and in chain of custody procedures. Respondents shall only use laboratories which have a documented quality system that complies with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA.

50. Sampling.

a. All results of sampling, tests, modeling or other data (including raw data) generated by Respondents, or on Respondents' behalf, during the period that this Order is effective, shall be submitted to EPA in the next monthly progress report as described in Paragraph 39 of this Order. EPA will make available to Respondents validated data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation.

b. Respondents shall verbally notify EPA **[insert if applicable, “and the State”]** at least ____ days prior to conducting significant field events as described in the SOW, RI/FS Work Plan or Sampling and Analysis Plan. At EPA's verbal or written request, or the request of EPA's oversight assistant, Respondents shall allow split or duplicate samples to be taken by EPA (and its authorized representatives) **[insert if applicable, “or the State”]** of any samples collected in implementing this Order. All split samples of Respondents shall be analyzed by the methods identified in the QAPP.

51. Access to Information.

a. Respondents shall provide to EPA **[insert if applicable “and the State”]**, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondents shall also make available to EPA **[insert if applicable “and the State”]**, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

b. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to EPA **[insert if applicable “and the State”]** under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when it is submitted to EPA [and the State], or if EPA has notified Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondents. Respondents shall segregate and clearly identify all documents or information submitted under this Order for which Respondents assert business confidentiality claims.

c. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondents assert such a privilege in lieu of providing documents, they shall provide EPA **[insert if applicable “and the State”]** with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of

each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

d. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

52. In entering into this Order, Respondents waive any objections to any data gathered, generated, or evaluated by EPA, the State or Respondents in the performance or oversight of the Work that has been verified according to the quality assurance/quality control (“QA/QC”) procedures required by the Order or any EPA-approved RI/FS Work Plans or Sampling and Analysis Plans. If Respondents object to any other data relating to the RI/FS, Respondents shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days of the monthly progress report containing the data.

XII. SITE ACCESS AND INSTITUTIONAL CONTROLS

53. If the Site, or any other property where access is needed to implement this Order, is owned or controlled by any of Respondents, such Respondents shall, commencing on the Effective Date, provide EPA **[insert if applicable, “the State”]**, and its **[replace with “their” if applicable]** representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Order.

54. Where any action under this Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within ___ days after the Effective Date, or as otherwise specified in writing by the EPA Project Coordinator. Respondents shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, “best efforts” includes the payment of reasonable sums of money in consideration of access. Respondents shall describe in writing their efforts to obtain access. If Respondents cannot obtain access agreements, EPA may either (i) obtain access for Respondents or assist Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate; (ii) perform those tasks or activities with EPA contractors; or (iii) terminate the Order. Respondents shall reimburse EPA for all costs and attorney’s fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XVIII (Payment of Response Costs). If EPA performs those tasks or activities with EPA contractors and does not terminate the Order, Respondents shall perform all other tasks or activities not requiring access to that property, and shall reimburse EPA for all costs incurred in performing such tasks or activities. Respondents shall integrate the results of any such tasks or activities undertaken by EPA into its plans, reports and other deliverables.

[NOTE: If EPA determines that land/water use restrictions are needed on property owned by settling or non-settling landowners, or that a property interest running with the land (granting either a right of access or a right to enforce land/water use restrictions) should be acquired from settling or non-settling landowners, consult the model language included in Section IX of the Revised Model RD/RA Consent Decree (June 15, 2001, or more recent update).]

55. Notwithstanding any provision of this Order, EPA **[insert if applicable, “and the State”]** retain[s] all of its **[replace with “their” if applicable]** access authorities and rights **[if land/water use restrictions are included, insert “, as well as all of its [their] rights to require land/water use restrictions”]**, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIII. COMPLIANCE WITH OTHER LAWS

56. Respondents shall comply with all applicable local, state and federal laws and regulations when performing the RI/FS. No local, state, or federal permit shall be required for

any portion of any action conducted entirely on-site, including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work is to be conducted off-site and requires a federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIV. RETENTION OF RECORDS

57. During the pendency of this Order and for a minimum of 10 years after commencement of construction of any remedial action, each Respondent shall preserve and retain all non-identical copies of documents, records, and other information (including documents, records, or other information in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after commencement of construction of any remedial action, Respondents shall also instruct their contractors and agents to preserve all documents, records, and other information of whatever kind, nature or description relating to performance of the Work.

58. At the conclusion of this document retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such documents, records or other information, and, upon request by EPA, Respondents shall deliver any such documents, records, or other information to EPA. Respondents may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, they shall provide EPA with the following: 1) the title of the document, record, or other information; 2) the date of the document, record, or other information; 3) the name and title of the author of the document, record, or other information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or other information; and 6) the privilege asserted by Respondents. However, no documents, records or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

59. Each Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

[NOTE: Include the following section in RI/FS AOCs for Superfund Alternate Sites.]

[____. NATURAL RESOURCE DAMAGES

____. For the purposes of Section 113(g)(1) of CERCLA, the parties agree that, upon issuance of this Order for performance of an RI/FS at the Site, remedial action under CERCLA shall be deemed to be scheduled and an action for damages (as defined in 42 U.S.C. § 9601(6)) must be commenced within 3 years after the completion of the remedial action.]

XV. DISPUTE RESOLUTION

[NOTE: The Regions should develop a record for the dispute and its resolution.]

60. Unless otherwise expressly provided for in this Order, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Order. The Parties shall attempt to resolve any disagreements concerning this Order expeditiously and informally.

61. If Respondents object to any EPA action taken pursuant to this Order, including billings for Future Response Costs, they shall notify EPA in writing of their objection(s) within ____ days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondents shall have ____ days from EPA's receipt of Respondents' written objection(s) to resolve the dispute (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Such extension may be granted verbally but must be confirmed in writing.

62. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Order. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the **[insert Region-specific]** level or higher will issue a written decision. EPA's decision shall be incorporated into and become an enforceable part of this Order. Respondents' obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs, and regardless of whether Respondents agree with the decision.

XVI. STIPULATED PENALTIES

63. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 64 and 65 for failure to comply with any of the requirements of this Order specified below unless excused under Section XVII (Force Majeure). "Compliance" by Respondents shall include completion of the Work under this Order or any activities contemplated under any RI/FS Work Plan or other plan approved under this Order identified below, in accordance with all

applicable requirements of law, this Order, the SOW, and any plans or other documents approved by EPA pursuant to this Order and within the specified time schedules established by and approved under this Order.

64. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per day for any noncompliance identified in Subparagraph 64(b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ _____	1 st through 14 th day
\$ _____	15 th through 30 th day
\$ _____	31 st day and beyond

b. Compliance Milestones

[List violations or compliance milestones, including due dates for payments of Past and/or Future Response Costs and establishing escrow accounts in the event of disputes.]

65. Stipulated Penalty Amounts - Reports.

a. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports **[insert if applicable, “or other written documents”]** pursuant to Paragraphs _____ :

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ _____	1 st through 14 th day
\$ _____	15 th through 30 th day
\$ _____	31 st day and beyond

[NOTE: If desired, Regions may develop separate tables of stipulated penalties for monthly progress reports and any interim deliverable or reports required under the SOW and/or RI/FS Work Plan.]

[NOTE: Paragraph 66 below should be removed from the Order if the work takeover provision in Paragraph 84 is not included in the Order.]

66. In the event that EPA assumes performance of a portion or all of the Work pursuant

to Paragraph 84 of Section XX (Reservation of Rights by EPA), Respondents shall be liable for a stipulated penalty in the amount of _____.

67. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section X (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and (2) with respect to a decision by the EPA Management Official designated in Paragraph 62 of Section XV (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

68. Following EPA's determination that Respondents have failed to comply with a requirement of this Order, EPA may give Respondents written notification of the same and describe the noncompliance. EPA may send Respondents a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondents of a violation.

69. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the dispute resolution procedures in accordance with Section XV (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to **[insert the Regional Lockbox number and address]**, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number ____, the EPA Docket Number ____, and the name and address of the party(ies) making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s) shall be sent to EPA as provided in Paragraph 31, and to **[insert the names and mailing addresses of any other receiving officials at EPA]**.

70. The payment of penalties shall not alter in any way Respondents' obligation to complete performance of the Work required under this Order.

71. Penalties shall continue to accrue as provided in Paragraph 67 during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

72. If Respondents fail to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 69.

73. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Order or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of willful violation of this Order or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX (Reservation of Rights by EPA), Paragraph 84. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

XVII. FORCE MAJEURE

74. Respondents agree to perform all requirements of this Order within the time limits established under this Order, unless the performance is delayed by a *force majeure*. For purposes of this Order, *force majeure* is defined as any event arising from causes beyond the control of Respondents or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Order despite Respondents' best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

75. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a *force majeure* event, Respondents shall notify EPA orally within **[insert period of time]** of when Respondents first knew that the event might cause a delay. Within _____ days thereafter, Respondents shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

76. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Order that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondents in writing of its decision. If EPA agrees that the

delay is attributable to a *force majeure* event, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. PAYMENT OF RESPONSE COSTS

[77. Payment of Past Response Costs.

a. Within 30 days after the Effective Date, Respondents shall pay to EPA \$ _____ for Past Response Costs. **[NOTE: The following language should be used for the rest of subparagraph 77.a. if the payment amount is above \$25,000. Regional attorneys should consult with the Comptroller's Office in the Region to determine if more specific EFT instructions should be included.]** Payment shall be made to EPA by Electronics Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Respondents by EPA Region _____, and shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name, the EPA Region and Site/Spill ID Number _____, and the EPA docket number for this action. **[NOTE: The following language may be used for the rest of subparagraph 77.a. if the payment amount is below \$25,000.]** Payment shall be made by certified or cashiers check made payable to "EPA Hazardous Substance Superfund." Each check, or letter accompanying each check, shall identify the name and address of the party(ies) making payment, the Site name, the EPA Region and Site/Spill ID Number _____, and the EPA docket number for this action, and shall be sent to:

EPA Superfund

[Insert Regional Superfund lockbox number and address.]

b. At the time of payment, Respondents shall send notice that payment has been made to:

[Insert name and mailing address of EPA Project Coordinator.]

c. The total amount to be paid by Respondents pursuant to Subparagraph 77.a shall be deposited in the **[Site Name]** Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.]

78. Payments of Future Response Costs.

a. Respondents shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondents a bill requiring payment that includes a **[insert name of standard Regionally-prepared cost summary, which includes direct and indirect costs incurred by EPA and its contractors. Also insert name of DOJ-prepared cost summary, which would reflect costs incurred by DOJ and its contractors, if any].** Respondents shall make all payments within 30 days of receipt of each bill requiring payment,

except as otherwise provided in Paragraph 79 of this Order. Respondents shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party(ies) making payment and EPA Site/Spill ID number _____. Respondents shall send the check(s) to:

[Insert appropriate Regional Superfund Lockbox number and address.]

[NOTE: Regions may substitute EFT payment instructions.]

b. At the time of payment, Respondents shall send notice that payment has been made to **[insert name and mailing address of the EPA Project Coordinator]**.

c. The total amount to be paid by Respondents pursuant to Subparagraph 78.a. shall be deposited in the **[Site Name]** Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

79. If Respondents **[insert if applicable "do not pay Past Response Costs within 30 days of the Effective Date, or"]** do not pay Future Response Costs within 30 days of Respondents' receipt of a bill, Respondents shall pay Interest on the unpaid balance of **[insert if applicable "Past Response Costs and"]** Future Response Costs, respectively. **[Insert if applicable, "The Interest on unpaid Past Response Costs shall begin to accrue on the Effective Date and shall continue to accrue until the date of payment."]** The Interest on unpaid Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. If EPA receives a partial payment, Interest shall accrue on any unpaid balance. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XVI. Respondents shall make all payments required by this Paragraph in the manner described in Paragraph 78.

80. Respondents may contest payment of any Future Response Costs under Paragraph 78 if they determine that EPA has made an accounting error or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the EPA Project Coordinator. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondents shall within the 30 day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 78. Simultaneously, Respondents shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of _____ and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to the EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes

and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondents shall initiate the Dispute Resolution procedures in Section XV (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 78. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 78. Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

XIX. COVENANT NOT TO SUE BY EPA

[NOTE: Use Paragraph 81, Alternative 1, if the Order requires payment of Past Response Costs and Future Response Costs.]

81. **[Alternative 1]** In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Order, and except as otherwise specifically provided in this Order, EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work performed under this Order and for recovery of Past Response Costs and Future Response Costs. This covenant not to sue shall take effect upon receipt by EPA of the Past Response Costs due under Section XVIII of this Order and any Interest or Stipulated Penalties due for failure to pay Past Response Costs as required by Sections XVIII and XVI of this Order. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Order, including, but not limited to, payment of Future Response Costs pursuant to Section XVIII. This covenant not to sue extends only to Respondents and does not extend to any other person.

[NOTE: Use Paragraph 81, Alternative 2, if the Order requires payment of Future Response Costs only.]

81. **[Alternative 2]** In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Order, and except as otherwise specifically provided in this Order, EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work performed under this Order and for recovery of Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondents of all obligations under this Order, including, but not limited to, payment of Future Response Costs pursuant to Section XVIII. This covenant not to sue extends only to Respondents and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

82. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

83. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Order is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondents to meet a requirement of this Order;
- b. liability for costs not included within the definition[s] of **[insert if applicable, “Past Response Costs or”]** Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

[NOTE: Regions may insert the following paragraph if desired. If Paragraph 84 is not included, do not include Paragraph 66 in the Stipulated Penalties section.]

84. Work Takeover. In the event EPA determines that Respondents have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondents may invoke the procedures set forth in Section XV (Dispute Resolution) to dispute EPA’s determination that takeover of the Work is warranted under this Paragraph. Costs incurred by EPA in performing the Work

pursuant to this Paragraph shall be considered Future Response Costs that Respondents shall pay pursuant to Section XVIII (Payment of Response Costs). Notwithstanding any other provision of this Order, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY RESPONDENTS

85. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, **[insert, if applicable, “Past Response Costs,”]** Future Response Costs, or this Order, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the Work or arising out of the response actions for which the **[insert, if applicable, “Past Response Costs or”]** Future Response Costs have or will be incurred, including any claim under the United States Constitution, the [State] Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work or payment of **[insert if applicable “Past Response Costs or”]** Future Response Costs.

[NOTE: The following provision should be included only in the event that the Order includes removal activities.]

[____. Respondents agree not to seek judicial review of the final rule listing the Site on the NPL based on a claim that changed site conditions that resulted from the performance of the Work in any way affected the basis for listing the Site.]

86. **[Insert this phrase if applicable, “Except as expressly provided in Section XXI, Paragraph[s] ____ and ____ (Non-Exempt De Micromis [and De Minimis] Waivers), and Paragraphs ____ and ____ (MSW Waiver),]** [t]hese covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 83 (b), (c), and (e) - (g), but only to the extent that Respondents’ claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

87. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

[NOTE: Insert the following waiver in Orders that involve Sites that are not listed as final on the National Priorities List.]⁸

[____. Respondents agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

____. The waiver in Paragraph ____ **[reference preceding paragraph]** shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6972, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.]

[Use as appropriate if a *de minimis* settlement has been concluded at the Site.]

[____. Respondents agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person that has entered into a final *de minimis* settlement under Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), with EPA with respect to the Site as of the Effective Date. This waiver shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person if such person asserts a claim or cause of action relating to the Site against such Respondent.]

⁸ This waiver is not necessary at NPL Sites because of the statutory *de minimis* exemption provided in Section 107(o) of CERCLA, 42 U.S.C. § 9607(o).

[NOTE: Use the following paragraphs if there is MSW at the Site unless a broader waiver of CERCLA claims against all persons is already included in the settlement.]⁹

[____. Respondents agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of Municipal Solid Waste (MSW) at the Site, if the volume of MSW disposed, treated or transported by such person to the Site did not exceed 0.2 percent of the total volume of waste at the Site.

____. The waiver in Paragraph ____ above shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines that: (a) the MSW contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; (b) the person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or § 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927; or (c) the person impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site.]

XXII. OTHER CLAIMS

88. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents.

89. Except as expressly provided in Section XXI, Paragraph[s] ____ [and ____] (Non-Exempt De Micromis [and De Minimis] Waivers), Paragraphs ____ and ____ (MSW Waiver) and Section XIX (Covenant Not to Sue by EPA), nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

90. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. CONTRIBUTION PROTECTION

⁹ This waiver is not necessary at NPL Sites for certain MSW generators (residential property owners, small businesses and non-profit organizations) who meet the criteria for the statutory MSW exemption provided in Section 107(p) of CERCLA, 42 U.S.C. § 9607(p).

91. The Parties agree that Respondents are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Order. The “matters addressed” in this Order are the Work, [Past Response Costs,] and Future Response Costs. **[Except as provided in Section XXI (Covenant Not to Sue by Respondents), Paragraph(s) ____ [and ____,] of this Order (Non-Exempt De Micromis [and De Minimis] Waivers), and Paragraphs ____ and ____ (MSW Waiver)]** [n]othing in this Order precludes the United States or Respondents from asserting any claims, causes of action, or demands against any person not parties to this Order for indemnification, contribution, or cost recovery.

XXIV. INDEMNIFICATION

92. Respondents shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Order. In addition, Respondents agree to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Order. Neither Respondents nor any such contractor shall be considered an agent of the United States.

93. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

94. Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site.

XXV. INSURANCE

95. At least ____ days prior to commencing any On-Site Work under this Order, Respondents shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of _____ million dollars,

combined single limit, naming the EPA as an additional insured. Within the same period, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Order, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Order. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. FINANCIAL ASSURANCE

96. Within 30 days of the Effective Date, Respondents shall establish and maintain financial security for the benefit of EPA in the amount of \$ **[insert estimated cost of Work]** in one or more of the following forms, in order to secure the full and final completion of Work by Respondents:

a. a surety bond unconditionally guaranteeing payment and/or performance of the Work;

b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA equaling the total estimated cost of the Work;

c. a trust fund administered by a trustee acceptable in all respects to EPA;

d. a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance of the Work;

e. a corporate guarantee to perform the Work provided by one or more parent corporations or subsidiaries of Respondents, or by one or more unrelated corporations that have a substantial business relationship with at least one of Respondents; including a demonstration that any such company satisfies the financial test requirements of 40 C.F.R. Part 264.143(f); and/or

f. a corporate guarantee to perform the Work by one or more of Respondents, including a demonstration that any such Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f).

[NOTE: If any Respondents who seek to provide a demonstration under 40 C.F.R. § 264.143(f) have provided a similar demonstration at other RCRA or CERCLA Sites, the amount for which they are providing financial assurance at those Sites should generally be

added to the estimated costs of the Work for this Paragraph. Regions should add a provision to the Order requiring Respondents to provide documentation of the prior demonstration.]

97. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondents shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 96, above. In addition, if at any time EPA notifies Respondents that the anticipated cost of completing the Work has increased, then, within 30 days of such notification, Respondents shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondents' inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Order.

98. If Respondents seek to ensure completion of the Work through a guarantee pursuant to Subparagraph 96.e. or 96.f. of this Order, Respondents shall (i) demonstrate to EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f); and (ii) resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date, to EPA. For the purposes of this Order, wherever 40 C.F.R. Part 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," the current cost estimate of \$___ for the Work at the Site shall be used in relevant financial test calculations.

99. If, after the Effective Date, Respondents can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 96 of this Section, Respondents may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondents shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, Respondents may seek dispute resolution pursuant to Section XV (Dispute Resolution). Respondents may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

100. Respondents may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondents may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

XXVII. INTEGRATION/APPENDICES

101. This Order **[insert if applicable, “and its appendices”]** and any deliverables, technical memoranda, specifications, schedules, documents, plans, reports (other than progress reports), etc. that will be developed pursuant to this Order and become incorporated into and enforceable under this Order constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Order. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Order. The following appendices are attached to and incorporated into this Order:

“Appendix A” is the SOW.

“Appendix B is the map of the Site **[insert name of OU if appropriate]**. **[NOTE: This provision is optional if the Region does not provide a Site map.]**

“Appendix C” is the **[insert name of any additional appendices attached to this Order]**.

[NOTE: Include the following section if any response costs are compromised under Section XVII of this Order.]

[___. PUBLIC COMMENT

____. Final acceptance by EPA of Paragraph ____ **[insert paragraph number within Section XVIII that address the costs, if any, that are being compromised]**¹⁰ of Section XVIII (Payment of Response Costs) of this Order shall be subject to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i), which requires EPA to publish notice of the proposed settlement in the Federal Register, to provide persons who are not parties to the proposed settlement an opportunity to comment, solely, on the cost recovery component of the settlement, and to consider comments filed in determining whether to consent to the proposed settlement. EPA may withhold consent from, or seek to modify, all or part of Section XVIII of this Order if comments received disclose facts or considerations that indicate that Section XVIII of this Order is inappropriate, improper or inadequate. Otherwise, Section XVIII shall become effective when EPA issues notice to Respondents that public comments received, if any, do not require EPA to modify or withdraw from Section XVIII of this Order.]

XXVIII. ADMINISTRATIVE RECORD

102. EPA will determine the contents of the administrative record file for selection of the remedial action. Respondents shall submit to EPA documents developed during the course of the RI/FS upon which selection of the response action may be based. Upon request of EPA, Respondents shall provide copies of plans, task memoranda for further action, quality assurance

¹⁰ Note CERCLA § 104(a)(1) requires that potentially responsible parties must agree to pay oversight costs.

memoranda and audits, raw data, field notes, laboratory analytical reports and other reports. Upon request of EPA, Respondents shall additionally submit any previous studies conducted under state, local or other federal authorities relating to selection of the response action, and all communications between Respondents and state, local or other federal authorities concerning selection of the response action. At EPA's discretion, Respondents shall establish a community information repository at or near the Site, to house one copy of the administrative record.

[____. ATTORNEY GENERAL APPROVAL]

[NOTE: This Section should be used if Attorney General approval is required for Section XVIII of this Order because total past and projected response costs of the United States at the Site will exceed \$500,000, excluding interest, and the Order compromises a claim for response costs.¹¹ If Attorney General approval is required, the Region should consult with DOJ during the negotiations process and obtain written DOJ approval before publishing notice of the proposed cost compromise in the Federal Register.]

[____. The Attorney General or [his/her] designee has approved the response cost settlement embodied in this Order in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).]

XXIX. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

103. **[NOTE: Regions may insert specific practice and language.]** This Order shall be effective ____ days after the Order is signed by the Regional Administrator or his/her delegatee **[if the Order includes a cost recovery compromise,¹² include the following, “, with the exception of Paragraph ____ of Section XVIII, which shall be effective when EPA issues notice to Respondents that public comments received, if any, do not require EPA to modify or withdraw from Paragraph ____ of Section XVIII of this Order.”]**

104. This Order may be amended by mutual agreement of EPA and Respondents. Amendments shall be in writing and shall be effective when signed by EPA. EPA Project Coordinators do not have the authority to sign amendments to the Order.

105. No informal advice, guidance, suggestion, or comment by the EPA Project Coordinator or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

XXX. NOTICE OF COMPLETION OF WORK

¹¹ Note CERCLA § 104(a)(1) requires that potentially responsible parties must agree to pay oversight costs.

¹² Note CERCLA § 104(a)(1) requires that potentially responsible parties must agree to pay oversight costs.

106. When EPA determines that all Work has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including but not limited to **[insert list of such obligations, e.g., payment of Future Response Costs or record retention]**, EPA will provide written notice to Respondents. If EPA determines that any such Work has not been completed in accordance with this Order, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the RI/FS Work Plan if appropriate in order to correct such deficiencies, in accordance with Paragraph 36 (Modification of the Work Plan). Failure by Respondents to implement the approved modified RI/FS Work Plan shall be a violation of this Order.

Agreed this ____ day of _____, 2____.

For Respondent _____

By: _____

Title: _____

[NOTE: Use a separate page for the following signature.]

It is so ORDERED AND AGREED this _____ day of _____, 2____.

BY: _____ DATE: _____

Name

Regional Administrator [or Delegatee]

Region _____

U.S. Environmental Protection Agency

EFFECTIVE DATE: _____